IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SECOND DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 14728 of 2003

Between:

S.M.Subhani, S/o Imam,18/108/A, Barracks, Nellore Dist.

..... PETITIONER

AND

The Managing Director, Singer India Limited,
3, Devika Tower, Nehru Place, New Delhi -19.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or directions more in the nature of writ of mandamus declaring the order of dismissed for default in I.A.No.216/2002 in M.P.No.150/2000 dt.7-4-2003 as illegal and arbitrary and set aside the same and consequentially restore the M.P.No.150/2000 on the file of Labour Court, Guntur.

Counsel for the Petitioner: MR.P.GOVINDA RAJULU

Counsel for the Respondent : None appeared

The Court made the following :

ORDER:

This Writ Petition is filed seeking declaration that the order dated 7-04-2003 in I.A.No.216 of 2002 in M.P.No.150 of 2000 on the file of Labour Court, Guntur, is arbitrary and illegal.

The petitioner filed M.P.No.150 of 2000 in the Labour Court, Guntur under Section 33-C(2) of the Industrial Disputes Act, 1947 for recovery of Rs.5,67,096/- from the respondent herein towards difference of minimum wages. The said petition was contested by the respondent-Management by filing counter-affidavit. It appears that while the matter was coming up for enquiry, the petitioner could not be present on 09-10-2002 and consequently the same was dismissed for default. On 10-10-2002, the petitioner filed I.A.No.216 of 2002 to set aside the order dated 9-10-2002 and to restore M.P.No.150 of 2000 so as to dispose of the same on merits. The said application was dismissed by the Labour Court by order dated 7-03-2003 which is under challenge in this Writ Petition.

Heard the learned counsel for the Petitioner.

Despite notice, the respondent has not put in appearance.

As can be seen from the impugned order, the application filed by the petitioner for restoration of M.P.No.150/00 was not opposed by the respondent-management and an endorsement was made by the respondent's counsel stating that he has no objection and the petition may be allowed. However, the Labour Court dismissed the application observing as under :

"if party was not absent, the counsel for petitioner should have been present to make representation and at least, he could have entrusted the matter to any of his colleagues to make representation when the matter was called. Since no effort was made by the learned counsel for the petitioner, the petition is liable to be dismissed".

Thus, it was concluded that there is no ground for setting aside the dismissal order. It is to be noted that even from the impugned order, it is clear that the petitioner was called absent at 11.20 a.m. It is true that there was no representation for the petitioner even by his counsel. However, the petitioner has moved the application for restoration on the very next day ie. 10-10-2002 stating that since he was stuck-up in traffic, he could not reach the Court in time and therefore, he could not be present when the case was called. The said plea was not disputed by the respondent and the petition was not opposed. If that be so, there is no justifiable reason for not accepting the plea of the petitioner.

Having regard to the facts and circumstances of the case, I am of the view that sufficient cause is made out for non-appearance of the petitioner when the case was called. The fact that he moved the application on the very next day itself shows his bona fides. In the circumstances, the Labour Court ought to have set aside the order dated 9-10-2002 and ought to have decide the matter on merits.

Accordingly, the impugned order dated 7-04-2003 is set aside and I.A.No.216 of 2002 shall stand allowed. Consequently, M.P.No.150 of 2000 is restored to its file and the same shall be decided on merits in accordance with Law.

The Writ Petition is accordingly allowed. There shall be no order as to costs.

22nd JULY 2004

BSS/GBS

That Rule Nisi has been made absolute as above. Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the twenty second day of July, Two thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Managing Director, Singer India Limited,
3, Devika Tower, Nehru Place, New Delhi -19.

2.Presiding Officer, Labour Court, Guntur

3.2CD copies.